

Rebecca J. Dockter
Helena City Attorney
City/County Building
316 N. Park Street
Helena, Montana
(406) 457-8595
rdockter@helenamt.gov

Attorney for City of Helena

UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
BUTTE DIVISION

<p>THE IMPERIAL SOVEREIGN COURT OF THE STATE OF MONTANA; ADRIA JAWORT; RACHEL CORCORAN; MONTANA BOOK COMPANY; IMAGINE BREWING COMPANY, LLC d/b/a IMGAIN NATION BREWING COMPANY; BUMBLEBEE AERIAL FITNESS; THE WESTERN MONTANA COMMUNITY CENTER; MONTANA PRIDE; THE GREAT FALLS LGBTQ+ COMMUNITY CENTER; THE ROXY THEATER; and THE MYRNA LOY,</p> <p>Plaintiffs,</p> <p>v.</p> <p>AUSTIN KNUDSEN; ELSIE ARNTZEN; J.P. GALLAGHER; and THE CITY OF HELENA</p>	<p>Cause No. CV-23-50-BU-BMM</p> <p>City of Helena Answer to Amended Complaint</p>
--	--

The City of Helena, through its City Attorney, Rebecca Dockter, submits this City of Helena Answer to Amended Complaint as follows:

INTRODUCTION

1. The City of Helena admits the allegations of paragraph 1.
2. Paragraph 2 states legal conclusions, therefore, no response is required. To the extent a response is required, the City of Helena denies this paragraph.
3. Paragraph 3 states legal conclusions, therefore, no response is required. To the extent a response is required, the City of Helena denies this paragraph.
4. Paragraph 4 states legal conclusions, therefore, no response is required. To the extent a response is required, the City of Helena denies this paragraph.
5. Paragraph 5 states legal conclusions, therefore, no response is required. To the extent a response is required, the City of Helena denies this paragraph.

JURISDICTION AND VENUE

6. The City of Helena admits the allegations of paragraph 6.
7. The allegations of paragraph 7 are not directed at the City of Helena; therefore, no response is required.
8. The allegations of paragraph 8 are not directed at the City of Helena; therefore, no response is required.

9. The allegations of paragraph 9 are not directed at the City of Helena; therefore, no response is required.

10. The City of Helena admits the allegations of paragraph 10.

11. The City of Helena admits the allegations of paragraph 11.

12. The City of Helena admits the allegations of paragraph 12.

PARTIES

13. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 13.

14. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 14.

15. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 15.

16. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 16.

17. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 17.

18. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 18.

19. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 19.

20. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 20.

21. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 21.

22. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 22.

23. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 23.

24. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 24.

25. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 25.

26. The City of Helena lacks sufficient knowledge and information to form a response to the allegations of Paragraph 26.

27. The City of Helena denies that it denied the Montana Pride application for event permits. The Montana Pride events occurred from July 30-August 6, 2023

fully permitted by the City. The City of Helena admits the remainder of Paragraph 27.

LEGAL BACKGROUND

28. Paragraph 28 contains references to legislative history and early drafts of HB 359 that speak for themselves; therefore, no response is required.

29. Paragraph 29 contains references to legislative history and early drafts of HB 359 that speak for themselves; therefore, no response is required.

30. Paragraph 30 contains references to legislative history and early drafts of HB 359 that speak for themselves; therefore, no response is required.

31. Paragraph 31 contains references to legislative history and the language of HB 359 which speaks for itself; therefore, no response is required.

32. Paragraph 32 contains references to legislative history and early drafts of HB 359 that speak for themselves; therefore, no response is required.

33. City of Helena lacks sufficient knowledge and information to form a response to the allegations of paragraph 33.

34. Paragraph 34 contains references to legislative history and early drafts of HB 359 that speak for themselves; therefore, no response is required.

35. Paragraph 35 contains references to the legislative history of HB 359 that speak for itself; therefore, no response is required.

36. Paragraph 36 states legal conclusions and refers to language of Montana law that speaks for itself; therefore, no response is required.

37. Paragraph 37 states legal conclusions and references to Montana law that speaks for itself; therefore, no response is required.

38. Paragraph 38 states legal conclusions and references to current law that speak for itself; therefore, no response is required.

39. Paragraph 39 contains references to the legislative history of HB 359 that speak for itself; therefore, no response is required.

40. Paragraph 40 states legal conclusions and references current law that speaks for itself; therefore, no response is required.

41. Paragraph 41 states legal conclusions, therefore, no response is required.

42. Paragraph 42 states legal conclusions, therefore, no response is required.

43. Paragraph 43 contains references to the legislative history of HB 359 that speaks for itself; therefore, no response is required.

44. Paragraph 44 contains references to the legislative history of HB 359 that speak for itself; therefore, no response is required.

45. Paragraph 45 contains references to the legislative history of HB 359 that speak for itself; therefore, no response is required.

46. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 46.

47. Paragraph 47 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

48. Paragraph 48 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

49. Paragraph 49 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

50. Paragraph 50 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

51. Paragraph 51 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

52. Paragraph 52 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

53. Paragraph 53 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

54. Paragraph 54 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

55. Paragraph 55 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

56. Paragraph 56 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

57. Paragraph 57 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

58. Paragraph 58 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

59. Paragraph 59 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

60. Paragraph 60 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

61. Paragraph 61 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

62. Paragraph 62 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

63. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 63.

64. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 64.

65. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 65.

66. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 66.

67. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 67.

68. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 68.

69. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 69.

70. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 70.

71. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 71.

72. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 72.

73. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 73.

74. The City of Helena admits the allegations of paragraph 74.

75. The City of Helena admits the allegations of paragraph 75.

76. The City of Helena admits the allegations of paragraph 76. The Montana Pride event did run from July 30 to August 6, 2023.

77. The City of Helena admits the allegations of paragraph 77. The Montana Pride event did indeed comply with all applicable City of Helena Permitting regulations and was issued a permit.

78. The City of Helena denies the allegations of paragraph 78.

79. The City of Helena admits the allegations of paragraph 79. The permit for the Montana Pride events was issued on July 27, 2023 after all review was finalized.

80. The City of Helena denies the permit was not issued, but admits that the City of Helena enforces municipal policy.

81. The City of Helena denies the allegations of paragraph 81. The City of Helena issued the permits and the drag show was held on August 5, 2023 on public property.

82. The City of Helena admits the allegations of paragraph 82.

83. The City of Helena admits that there are likely other events that will be affected by HB 359. However, the City of Helena does not plan to deny permits based upon HB 359 conditions.

84. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 84.

85. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 85.

86. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 86.

87. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 87.

88. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 88.

89. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 89.

90. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 90.

91. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 91.

92. The City of Helena lacks sufficient information and knowledge to form a response to paragraph 92.

93. Paragraph 93 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

94. Paragraph 94 states legal conclusions and references to HB 359 and other current law that speaks for itself; therefore, no response is required.

95. Paragraph 95 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

96. Paragraph 96 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

97. Paragraph 97 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

98. The City of Helena lacks sufficient knowledge and information to form a response to paragraph 98.

99. The City of Helena lacks sufficient knowledge and information to form a response to paragraph 99.

100. The City of Helena lacks sufficient knowledge and information to form a response to paragraph 100.

101. The City of Helena lacks sufficient knowledge and information to form a response to paragraph 101.

102. Paragraph 102 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

103. Paragraph 103 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

CLAIMS FOR RELIEF

COUNT 1:

Violation of Free Speech, U.S. Const. amend. 1

(as applied to Plaintiff Jawort)

104. The City of Helena incorporates herein all the responses to paragraphs 1-103 as if set forth in full.

105. The City of Helena admits the allegations of paragraph 105.

106. The City of Helena lacks sufficient knowledge and information to form a response to paragraph 106.

107. The City of Helena lacks sufficient knowledge and information to form a response to paragraph 107.

108. The City of Helena lacks sufficient knowledge and information to form a response to paragraph 108.

109. The City of Helena lacks sufficient knowledge and information to form a response to paragraph 109.

110. Paragraph 110 states legal conclusions, therefore, no response is required.

COUNT II:

Violation of Equal Protection, U.S. Const. amend. XIV, §2

42 U.S.C. § 1983

111. The City of Helena incorporates herein all the responses to paragraphs 1-110 as if set forth in full.

112. The City of Helena admits the allegations of paragraph 112.

113. The City of Helena admits the allegations of paragraph 113.

114. The City of Helena admits the allegations of paragraph 114.

115. Paragraph 115 states legal conclusions, therefore, no response is required.

116. Paragraph 116 states legal conclusions, therefore, no response is required.

COUNT III:

Violation of Free Speech, U.S. Const. amend. 1

(as applied to Plaintiff Montana Pride)

42 U.S.C. § 1983

117. The City of Helena incorporates herein all the responses to paragraphs 1-116 as if set forth in full.

118. The City of Helena admits the allegations of paragraph 118.

119. The City of Helena admits the allegations of paragraph 119.

120. The City of Helena denies the allegations of paragraph 120. The City of Helena issued a permit to Montana Pride, and the events were held July 30 – August 6, 2023 as planned.

121. The City of Helena denies the allegations of paragraph 121. The City of Helena issued a permit to Montana Pride, and the events were held July 30 – August 6, 2023 as planned.

122. The City of Helena admits that law restricting First Amendment rights must be content-neutral. The City of Helena denies the remainder of paragraph 122. The City of Helena issued a permit to Montana Pride, and the events were held July 30 – August 6, 2023 as planned.

123. The City of Helena denies the allegations of paragraph 123. The City of Helena issued a permit to Montana Pride, and the events were held July 30 – August 6, 2023 as planned.

124. Paragraph 124 states legal conclusions, therefore, no response is required.

COUNT IV:

Violation of Free Speech, U.S. Const. amend. 1, as Incorporated Against the States, U.S. Const. amend. XIV

(facial challenge to HB 359)

125. The City of Helena incorporates herein all the responses to paragraphs 1-124 as if set forth in full.

126. Paragraph 126 states legal conclusions, therefore, no response is required.

127. Paragraph 127 states legal conclusions and references to HB 359 language that speaks for itself; therefore, no response is required.

128. Paragraph 128 states legal conclusions, therefore, no response is required.

129. Paragraph 129 states legal conclusions, therefore, no response is required.

130. Paragraph 130 states legal conclusions, therefore, no response is required.

131. Paragraph 131 states legal conclusions, therefore, no response is required.

132. Paragraph 132 states legal conclusions, therefore, no response is required.

133. Paragraph 133 states legal conclusions, therefore, no response is required.

COUNTY V:

**Violation of Due Process, U.S. Const. amend. V, as Incorporated Against the
Sates, U.S. Const. amend. XIV**

(facial challenge to HB 359)

134. The City of Helena incorporates herein all the responses to paragraphs 1-133 as if set forth in full.

135. Paragraph 135 states legal conclusions, therefore, no response is required.

136. Paragraph 136 states legal conclusions, therefore, no response is required.

137. Paragraph 137 states legal conclusions, therefore, no response is required.

AFFIRMATIVE DEFENSES

1. The City of Helena denies each and every allegation not specifically admitted herein.

2. Plaintiffs' Amended Complaint fails to state a claim against the City of Helena for which relief can be granted.

3. Plaintiffs lack standing against the City of Helena.

4. Plaintiffs' claims against the City of Helena are moot, as the permit was issued on July 27, 2023, and the Montana Pride events were held as planned.

Plaintiff Montana Pride's counsel acknowledged during the July 26, 2023 hearing on the Temporary Restraining Order that Count III against the City of Helena is rendered moot by issuance of the permit.

PRAYER FOR RELIEF

WHEREFORE, Defendant City of Helena, having fully answered the First Amended Complaint (Doc. 3), respectfully prays for judgment as follows:

1. For dismissal of the City of Helena from the Amended Complaint altogether and from Count III, in particular.

2. For such other relief as the Court deems just and proper.

DATED this 10th day of August, 2023.

Respectfully submitted,
/s/Rebecca J. Dockter

REBECCA J. DOCKTER
City Attorney
City/County Building
316 Park Avenue
Helena, Montana 59601
(406) 457-8595

Attorney for Defendant City of Helena

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon all parties of record via CM/ECF on the 10th day of August, 2023.

/s/ Jennifer Berry